

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 168 of 1999

to

FIRST APPEAL No 210 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

RAMANBHAI BECHARBHAI PATEL

Appearance:

MR SJ DAVE AGP for Appellants

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 26/04/2000

1. Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated 24th October, rendered by the learned Second Extra Assistant Judge, Kheda, at Nadiad, in Land Acquisition Cases Nos.1321/91 to 1356/91 and 649/93 to 655/93. As common questions of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. A proposal was sent by Executive Engineer, Narmada Canal Project Division No.3/6, Thasra for acquisition of agricultural lands of village Vina for the public purpose of Narmada Project. The said proposal was scrutinized by the Government and notification to acquire lands of the claimants-respondents came to be issued under Section 4(1) of the Act, which came to be published in the Government Gazette on 16th February,1991. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Vina which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Project. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on 19th September,1991. After following usual procedure under the Act, the Land Acquisition Officer made his award on 24th December,1991 and offered compensation to the claimants at the rate of Rs.240/- per Are in respect of their acquired lands of village Vina. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Kheda, which were numbered as stated in para-1 above. All the land reference cases came to be consolidated and the parties led common evidence in Land Acquisition Case No.652 of 1993.

3. Before the Reference Court, the claimants claimed compensation at the rate of Rs.2500/ per Are by, inter alia, contending that acquired lands were having high

fertility and they were raising three crops. In the Reference Court, it was contended by the respondents/claimants that looking to the fertility and situation of the acquired lands, compensation offered by the Land Acq. Officer was merely inadequate and they may be awarded compensation at the rate of Rs.2500/- per Are.

4. Applications filed by the respondents for enhancement of compensation was contested by the appellant by filing their reply, inter alia, contending that the claimants are not entitled to additional compensation, as compensation offered by the Land Acquisition Officer was just and adequate. It is further contended that the Land Acquisition Officer had taken into consideration fertility and crop income, etc. of the acquired lands and had also taken into consideration prevalent market value of acquired lands on the date of the notification. The appellants, therefore, contended that a just compensation was awarded by the Land Acquisition Officer and the reference applications be dismissed.

5. To substantiate their claim of enhanced compensation of acquired lands, the claimants examined Ramanbhai Becharbhai Patel at Exh.61, who is claimant of Land Acquisition Case No.652/93. Claimants produced documentary evidence such as certified copy of 7/12 extract at exh.11, previous award rendered in Land Ref. Case No.299/89 in respect of acquired agricultural lands of village Erandiyapura at exh.12, previous award of Land Ref. Case No. 231/89 in respect of agricultural lands of village Bilodra, electricity bills at exh.13 to 16, price list of tobacco at exh.17, certified copies of 7/12 extracts at exh.18 to 60. Appellant did not examine any witness, but produced documentary evidence. Appellants produced previous award at exh.64 in respect of acquired lands of village Bagdu and map at exh.65.

5. Claimant Ramanbhai Becharbhai Patel, exh.61, described fertility and situation of the acquired lands. He deposed that villages Erandiyapura and Bilodra were adjoining to village Vina where present acquired agricultural lands are situated. Witness further deposed that acquired lands of villages Erandiyapura and Bilodra were having same fertility and agriculturists of all the three villages namely Erandiyapura, Bilodra and Vina were raising similar crops.

6. Reference Court, on overall appreciation of oral as well as documentary evidence, observed that acquired lands of village Bilodra were situated in the developed

area near to Ahmedabad-Baroda Express Highway. Reference Court further observed that market price of the acquired lands of village Bilodra was determined at the rate of Rs.2500/ per Are as on in the year 1987. Reference Court further observed that the acquired lands of village Bagdu were situated adjoining to village Vina and market price of which was determined at the rate of Rs.1060/ per Are as on in the year 1990. However, in the opinion of the Reference Court, as village Bilodra was developed village whereas village Bagdu was not having more development. Reference Court, for determination of market value of the present acquired lands of village Vina, mainly relied on previous award of village Bagdu produced at exh.64 wherein market price was determined at the rate of Rs.1060/ per Are as on in the year 1990. Reference Court has given rise/increase of 20% on the market price determined for the acquired lands of village Bagdu, for arriving at market price of the present acquired lands at the rate of Rs.1250/ per Are which has given rise of filing these appeals by the appellants.

7. Mr. S.J.Dave, learned AGP has taken us through the record and proceedings of the Reference Court and has vehemently submitted that the Reference Court ought to have fixed market value of the acquired lands at the rate of Rs. 1060/ per Are which was determination of the market value of the lands of village Bagdu and should not have given increase of 20% to the market price of the lands of village Bagdu. Learned counsel for the appellant submitted that determination of market price of the acquired lands of village Vina was on a higher side and, therefore, these appeals should be entertained and allowed.

8. We have gone through relevant documents and evidence produced by the learned counsel for the appellants. Contentions raised by the learned counsel for the appellants do not deserve any merits and require to be rejected. Respondents claimants had lost their source of livelihood by compulsory acquisition of their agricultural lands in the year 1990. From the documents, in the nature of previous awards produced by the parties, it becomes evident that because of compulsory acquisition for the public purpose of laying down canal for Narmada Project, vast area of lands were acquired in villages Bilodra, Erandiyapura and Bagdu which are situated adjoining to each other. Present agricultural lands of village Vina were also situated adjoining to the lands of above-mentioned three villages. 7/12 extracts produced by respondents show that lands were having high fertility

and respondents were raising three crops in a year and getting substantial income out of sale of agricultural produce. Oral evidence of claimant Ramanbhai Becharbhai Patel exh.61 proves that agricultural lands of villages Bilodra, Erandiyapura and Bagdu were having same fertility and agriculturists were raising similar crops on similar pattern. Therefore, in our opinion, previous awards of three villages were relevant and comparable for determination of the market value of the present acquired lands. It requires to be mentioned that though agricultural lands of village Bilodra were assessed at the rate of Rs. 2500/ per Are as on in the year 1987, whereas the present lands under appeal were acquired in the year 1990 and Reference Court determined market value at the rate of Rs. 1250/ per Are as on in the year 1990-91. In our opinion, Reference Court was justified in relying on the previous award of village Bagdu and taking judicial notice of previous awards of village Bilodra and Erandiyapura which were also relevant and comparable for determination of market value of the present acquired lands. It is not brought to our notice that previous awards relied on by the Reference Court were challenged in the higher forum. Therefore, it becomes evident that previous awards had become final and, therefore, they were relevant and comparable for determination of the market value of the lands which are the subject matter of these appeals. It is to be born in mind that present acquired lands of village Vina were situated on the bank of river Shedhi. Village Bagdu was less developed as compared to the present acquired lands of village Vina and, therefore, Reference Court has committed no error in giving rise/ increase of 20% on the market value of the acquired lands of village Bagdu. Notification issued under sec.4(1) of the Act of the present acquired lands and acquired lands of village Bagdu were in near proximity of time and, therefore, Reference Court had committed no error in relying on the previous award of acquired lands of village Bagdu produced at exh.64 for determination of market value of the present acquired lands. Taking into consideration, totality of the evidence produced by the parties, we are of the opinion that the Reference Couurt was justified in determining market value of the present acquired lands at Rs. 1250/ per Are as on in the year 1990-91.

9. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from adjoining village. Evidence of claimant Ramanbhai Becharbhai Patel makes it clear that

agricultural lands of previous awards were similar in all respect to the lands acquired in the present case. Therefore, in our opinion, the Reference Court had not committed any error in placing reliance on previous awards in respect of acquired lands of village Bagdu, Bilodra and Erandiyapura which had become final, for the purpose of ascertaining market value of acquired lands of village Vina. The claimants had lost their irrigated and fertile lands by the present acquisition. It is true that the State has right to acquire lands under the principle of eminent domain, but, at the same time, it is the duty of the Court to see that proper and adequate compensation should be paid to the claimants as they had lost the only source of their livelihood. As far as possible the claimants should be placed in the same situation as if their lands were not acquired. In such case, it is the anxiety of the Court to award a just and adequate compensation to the claimants. In our opinion, the claimants cannot be non-suited on the ground that they have not produced sufficient evidence to justify award of compensation for their acquired lands. The Reference Court has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. We are of the view that determination of market value of acquired lands of village Vina at Rs. 1250/- per Are as on in the year 1990-91, cannot be regarded as excessive at all. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. We, therefore, confirm determination of the market value of the acquired lands at Rs.1250/- per Are. Statutory benefits extended in favour of the claimants under sec. 23(1-A) and 23(2) and interest under sec.28 of the Act are eminently just and proper and are hereby confirmed.

10. For the foregoing reasons, all the appeals fail and are dismissed summarily with no order as to costs.

26.4.2000 [M.H. KADRI, J]

[C.K. BUCH, J]

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